

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Diana Hynek 12/02/2002  
Departmental Paperwork Clearance Officer  
Office of the Chief Information Officer  
14th and Constitution Ave. NW.  
Room 6625  
Washington, DC 20230

In accordance with the Paperwork Reduction Act, OMB has taken the following action on your request for approval of a new information collection received on 10/11/2002.

TITLE: Revisions to American Lobster Requirements for Historical Participation in Areas 3, 4, and 5.

AGENCY FORM NUMBER(S): None

ACTION : APPROVED WITHOUT CHANGE

OMB NO.: 0648-0465

EXPIRATION DATE: 04/30/2003

BURDEN:	RESPONSES	HOURS	COSTS(\$,000)
Previous	0	0	0
New	954	308	0
Difference	954	308	0
Program Change		308	0
Adjustment		0	0

TERMS OF CLEARANCE: None

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OMB Authorizing Official Title

Donald R. Arbuckle Deputy Administrator, Office of  
Information and Regulatory Affairs

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# PAPERWORK REDUCTION ACT SUBMISSION

**Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.**

1. Agency/Subagency originating request	2. OMB control number <span style="float: right;">b. <input type="checkbox"/> None</span> a. _____ - _____
3. Type of information collection ( <i>check one</i> ) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number For b-f, note Item A2 of Supporting Statement instructions	4. Type of review requested ( <i>check one</i> ) a. <input type="checkbox"/> Regular submission b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____ c. <input type="checkbox"/> Delegated  5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No  6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____
7. Title	
8. Agency form number(s) ( <i>if applicable</i> )	
9. Keywords	
10. Abstract	
11. Affected public ( <i>Mark primary with "P" and all others that apply with "x"</i> ) a. <input type="checkbox"/> Individuals or households d. <input type="checkbox"/> Farms b. <input type="checkbox"/> Business or other for-profit e. <input type="checkbox"/> Federal Government c. <input type="checkbox"/> Not-for-profit institutions f. <input type="checkbox"/> State, Local or Tribal Government	12. Obligation to respond ( <i>check one</i> ) a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual recordkeeping and reporting burden a. Number of respondents _____ b. Total annual responses _____ 1. Percentage of these responses collected electronically _____ % c. Total annual hours requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden ( <i>in thousands of dollars</i> ) a. Total annualized capital/startup costs _____ b. Total annual costs (O&M) _____ c. Total annualized cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____
15. Purpose of information collection ( <i>Mark primary with "P" and all others that apply with "X"</i> ) a. <input type="checkbox"/> Application for benefits e. <input type="checkbox"/> Program planning or management b. <input type="checkbox"/> Program evaluation f. <input type="checkbox"/> Research c. <input type="checkbox"/> General purpose statistics g. <input type="checkbox"/> Regulatory or compliance d. <input type="checkbox"/> Audit	16. Frequency of recordkeeping or reporting ( <i>check all that apply</i> ) a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____
17. Statistical methods Does this information collection employ statistical methods <input type="checkbox"/> Yes <input type="checkbox"/> No	18. Agency Contact (person who can best answer questions regarding the content of this submission)  Name: _____ Phone: _____

## 19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

**NOTE:** The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
  - (i) Why the information is being collected;
  - (ii) Use of information;
  - (iii) Burden estimate;
  - (iv) Nature of response (voluntary, required for a benefit, mandatory);
  - (v) Nature and extent of confidentiality; and
  - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator, Deputy Assistant Administrator, Line Office Chief Information Officer, head of MB staff for L.O.s, or of the Director of a Program or StaffOffice)	
Signature	Date
Signature of NOAA Clearance Officer	
Signature	Date

**SUPPORTING STATEMENT  
REVISIONS TO THE AMERICAN LOBSTER REQUIREMENTS FOR HISTORICAL  
PARTICIPATION IN AREAS 3, 4, AND 5**

**National Marine Fisheries Service  
Northeast Regional Office**

**INTRODUCTION**

This emergency clearance request seeks to make changes to the information requirements approved under OMB # 0648-0450. That submission addressed the burden associated with a system of lobster trap effort control in specific portions of the Exclusive Economic Zone (EEZ) based on the historical participation qualification requirements described in a Proposed Rule published on January 3, 2002 (67 FR 282). Since the publication of the proposed rule and OMB approval of the corresponding burden estimates, NOAA Fisheries has developed a final supplemental environmental impact statement (FSEIS) and final rule, both pending clearance, that slightly modify the documentation required by Federal lobster permit holders who apply for access to these lobster management areas under the proposed historical participation program. These modifications are (1) a cover letter explaining the supporting documentation submitted, and (2) a documentary hardship appeals process. These revised requirements, and the associated burden on the public and the Federal government, will be addressed in this supporting statement. If approved, these requirements will later be merged with those under OMB # 0648-0450.

**A. JUSTIFICATION**

**1. Why is this information collection necessary?**

The information collected will allow NOAA Fisheries to conduct a comprehensive application review and eligibility determination of the applications, and any subsequent appeals, submitted by permit holders intending to qualify for future access to the lobster trap fishery in lobster conservation management areas (LCMA, Area) 3, 4 and 5, based on historical participation in the fishery. The historical participation effort reduction program was recommended for Federal implementation by the Atlantic States Marine Fisheries Commission (Commission) in Addendum I to Amendment 3 of the Commission's Interstate Fishery Management Plan for American Lobster (ISFMP). The ISFMP is intended to end overfishing and rebuild overfished lobster stocks and the measures of Addendum I are an important step toward this goal. The Atlantic Coastal Act requires NOAA Fisheries to implement management measures for American lobster in the EEZ that are compatible with the recommendations of the Commission and consistent with the National Standards set forth in the Magnuson-Stevens Act. The proposed management regime meets both of these mandates.

## **2. How, by whom, how frequently, and for what purpose will the collected information be used?**

NOAA Fisheries will be requesting two types of information under this PRA submission to address some issues that were not covered under the initial submission, but considered necessary in the effective and fair administration of the historical participation qualification process. The data will be collected by NOAA Fisheries on a one-time basis during a specified application period. First, NOAA Fisheries will strongly recommend that all applicants, at the applicant's discretion, provide a cover letter with their application and supporting documentation. Given that over 900 applications are expected to be submitted, likely with varied types of documentation, NOAA Fisheries will include in the Final Rule the option on the part of the applicant to provide a cover letter with the application. The cover letter will expedite the review process, provide an opportunity for the applicant to fully and clearly state the intention of the application, and is consistent with good and normal business practices.

The second type of documentation addressed under this submission applies to appeals under a documentary hardship. In developing the FSEIS and Final Rule, NOAA Fisheries felt that some permit holders who should qualify for access to LCMAs 3, 4 or 5, may no longer possess the necessary documentation required to substantiate their eligibility, due to no fault of their own. Therefore, an appeal provision based on such a documentary hardship was added to the administrative procedures set forth for this program. The guidelines for submitting, collecting and processing the data elements included in the submission are presented below.

### Cover Letter

NOAA Fisheries will allow each applicant to explain his or her proof of meeting the eligibility criteria in a cover letter to be included with the application and supporting documentation. The supporting documentation must be dated, created on or about the date of the activity described in the document, and must be clearly attributable to the qualifying vessel. The cover letter is the vehicle to allow the applicant to effectively explain the relationship between the supporting documentation and the eligibility criteria.

### Documentary Hardship Appeals

In order to appeal on the basis of a documentary hardship, the appellant must have first applied in the manner set forth as described in the FSEIS, Final Rule, and OMB # 0648-0450, and been denied because of an inability to document the qualifying criteria. An appellant in such a circumstance must establish two elements: 1) the appellant must document the nature of the hardship (this documentation is sometimes referred to as corroborating documentation within the scope of this supporting statement); and 2) the appellant must establish the necessary qualification and trap allocation elements by affidavit.

First, as to documenting the nature of the hardship, it is not enough to simply indicate that the applicant no longer possesses the necessary records. The hardship must have been caused by factors beyond the applicant's control. Examples of such would include documents lost in a

flood or fire. Such a hardship would need to be corroborated by independent documents, such as by insurance claims forms or police and fire reports. Failure to create the document in the first instance, or simple loss of the document, or the intentional destruction or discarding of the document in the past by the appellant would not constitute grounds for a hardship under this action.

Second, after claiming and documenting hardship beyond his or her control, the appellant would then need to submit to NOAA Fisheries three (potentially four) affidavits. Of this total, the applicant must submit three (3) affidavits from current Federal permit holders that corroborate the applicant's claims that he or she meets the qualification and trap allocation criteria set forth for Area 3 and/or for Areas 4 and 5 in the FSEIS and Final Rule. The Federal fishing permit holder need not necessarily be a lobster permit holder, although he or she may be. Each affidavit must clearly specify that the person signing the affidavit had personal knowledge that the applicant fished the area(s) in question during the qualification period and the person signing the affidavit fished the area(s) in question during the qualification period. Further, at least one affidavit must also corroborate the basis for the hardship claimed by the appellant, for example, by a representative of the insurance agency, police, or fire department if the hardship was the result of a flood or fire. The person signing this last affidavit need not be Federal permit holder, although he or she may be if the individual has personal knowledge of the hardship claimed by the applicant. Hence the potential for four (4) affidavits: if none of the three Federal permit holders can also document the hardship, then the appellant could submit a fourth affidavit from a non-permit holder to do so. Additional affidavits beyond that outlined herein are not necessary and will grant the appellant no advantage. In other words, if the three (or four, depending on the circumstances) affidavits establish the required elements, then additional affidavits are superfluous and will be given no extra weight.

All appeals must be in writing and must be submitted to the Regional Administrator postmarked no later than 45 days after the date of the Notice of Denial. This 45 day period shall be a hard deadline, although the appellant may, in notifying the Regional Administrator of the appeal within the deadline, request an additional 30 day extension to procure the necessary affidavits and documentation. This 30 day extension shall be added to the initial 45 day period and calculated as extending from the original date of Notice of Denial. In other words, regardless of the date the request (so long as it is in keeping with above stated deadlines), the extension will be granted as extending 75 days from the date of the Notice of Denial.

Upon receipt of a complete written appeal with supporting documentation, the Regional Administrator may issue a Provisional Permit/Letter of Authorization to fish with traps in the area(s) in question under appeal (Areas 3, 4, and/or 5) that is valid for the period during the appeal. This Provisional Permit/Letter of Authorization will be subject to all Federal lobster regulations. While the appeal is pending, the vessel may fish up to 800 lobster traps, unless the vessel's Federal lobster permit is designated only for Area 3, or Area 3 and the 2/3 Overlap, for lobster trap fishing, whereby, the vessel may fish up to 1,800 lobster traps in Area 3 only.

The Regional Administrator will appoint an appeals officer who will review the appeal documentation. The appeals officer may, at his or her discretion, contact the appellant with questions concerning the pending appeal. After completing a review of the appeal, the appeals officer will make findings and a recommendation, which shall be advisory only, to the Regional Administrator who shall make the final decision to issue a permit or deny the appeal. The Regional Administrator's decision is the final administrative action of the agency on the application.

If the appeal is finally denied, the Regional Administrator will send a notice of final denial to the vessel owner; the authorizing letter will become invalid 5 days after receipt of the notice of denial, or 15 days after the date it was sent, whichever occurred first.

### **3. Can improved technology reduce the burden?**

No. Without the documentation available to substantiate a permit's eligibility, only the signed affidavits by other fishermen, or other individuals as necessary, will suffice as a substitute when appealing an initial denial of the application under a documentary hardship. The affidavits must be signed by the originator and, therefore, only original documents will suffice. As such, the affidavits would need to be mailed to NOAA Fisheries for review by a designated appeals officer. The same holds true for the cover letter for the initial application. An applicant must submit the entire package by post to facilitate its review and processing and to ensure that all documents are authentic and original. Allowing submission of the cover letter, appeal affidavits, corroborating documentation, or any portion of the application by technologically advanced means such as facsimile machine or Internet, would only increase the burden on the applicant and complicate matters by allowing submission by more than one method. It would also increase the burden on the government since it would require personnel to ensure that all portions of the application, however submitted, were discovered and united, before the initial review could commence. It would also increase the burden on Federal government reviewers by further tasking them to ensure that the documents received were, in fact, authentic.

### **4. Describe any duplication of effort.**

There is no expected duplication of effort associated with this revised submission which addresses only the affidavits and corroborating documentation required under an appeal due to a documentary hardship and the option for all applicants to include a cover letter with the initial application package.

### **5. How are the impacts on small businesses minimized?**

This revised submission will minimize impacts on small entities that may otherwise lose the opportunity to have access to specific fishing areas that they may have historically exploited because they cannot, due to circumstances beyond their control, provide the necessary documentation required to substantiate eligibility. Therefore, this specific data collection provides an opportunity for those who appeal an initial denial due to a documentary hardship to



provide affidavits as an alternative form of documentation. The cover letter to be submitted with the initial application provides the applicant with an opportunity to clearly and effectively state the nature of the vessel's relevant fishing history with respect to the supporting documentation submitted, in light of the array of documentation that could be used across the universe of permit holders for this purpose. The cover letter is a simple and optional requirement that is consistent with standard business practices and has been included with this revised submission for clarity.

#### **6. What are the consequences of no, or a less frequent collection?**

Not specifically stating that an applicant may submit a cover letter that explains the intent of the application and the significance of the supporting documentation would diminish the ability of NOAA Fisheries to effectively review the application. More importantly, it may also afford the applicant the chance to explain any vague and cryptic eligibility documentation submitted, for example, a personal vessel logbook filled out by an applicant with poor handwriting. The cover letter is also synonymous with standard business practices and may minimize inequities that could otherwise be suffered by less sophisticated applicants who may not have thought to submit a cover letter unless specifically given the option. Given that over 900 applications are expected to be submitted, likely with varied types of documentation, NOAA Fisheries has added this option in the Final Rule to expedite the review process and provide the applicant the opportunity to fully and clearly state the intent of the application.

A documentary hardship provision has also been included in the Final Rule. NOAA Fisheries believes that this requirement is necessary because some individuals, due to no fault of their own, may no longer possess the documentation necessary to demonstrate active involvement in the fishery during the specified qualification period. Therefore, NOAA Fisheries has specifically included guidelines for submitting affidavits from other individuals to support a claim of historical participation in the LCMA 3, 4 and/or 5 lobster trap fishery in lieu of the required documentation to support eligibility. NOAA Fisheries believes that without such an appeal provision, some likely qualifiers would be unable to prove their eligibility, and would, accordingly, be denied access to the fishery in these specific LCMAs.

#### **7. Explain if the request is not consistent with OMB guidelines.**

The data collection as described is consistent with the guidelines established by OMB.

#### **8. Describe efforts to get comments from outside the agency.**

With respect to the management measures as recommended by the Commission in Addendum I to Amendment 3 of the ISFMP, NOAA Fisheries first informed the public of the intent to consider using historical participation as a means of limiting access into the lobster trap fishery in the form of an ANPR, published in the Federal Register on September 1, 1999. The ANPR requested comments on the need for limiting access to the American lobster resource based on historical participation in Areas 3, 4 and 5. It also requested that the public provide comments on the type of eligibility requirements that should be used if it was determined that participation

in the trap fishery should be restricted. The ANPR also informed the public that the publication date of the notice, September 1, 1999, would likely be used as a control date, or cut-off date, to establish historical participation in these areas if such a system is implemented.

An NOI and request for comments regarding the preparation of an environmental impact statement concerning historical participation, as well as a suite of other lobster management measures at the request of the Commission, was published in the Federal Register on December 10, 1999. On December 15, a letter was sent, along with a copy of the notice, to all federal lobster permit holders which explained the NOI and requested comments.

The DSEIS was published in November 2000 and analyzed the biological, social and economic impacts of three possible management alternatives for historical participation in LCMAs 3, 4 and 5; evaluated a two-tier trap limit program proposed by the State of New Hampshire (and approved by the Commission) as a conservation equivalent measure to replace an 800 trap limit in New Hampshire waters of LCMA 1; and addressed the need to clarify the boundaries of certain LCMAs off Massachusetts to be consistent with historical fishing practices. Four public hearings were held coastwide in December 2000 to seek public comment on the DSEIS. In anticipation of the Commission's approval of Addendum II, the DSEIS also solicited public comment on minimum gauge size increases.

NOAA Fisheries published a proposed rule on January 3, 2002, to solicit public comment on proposed Federal management measures in response to the Commission's recommendations in Addendum I. The documentary hardship data collection requirement addressed in this PRA submission addresses specific comments received in response to the Proposed Rule requesting that consideration be given to applicants who no longer have possession of the documentation necessary to substantiate eligibility under the proposed historical participation qualification criteria.

In addition to formal announcements made by NOAA Fisheries, the use of historical participation as a means of limiting access was discussed at formal Commission public meetings with the intention of recommending that the authorized agencies implement such measures in both state and Federal waters.

**9. Explain any gifts or payment provided to respondents.**

Respondents will not receive any gifts or payment.

**10. Describe any assurances of confidentiality.**

NOAA Fisheries will keep the data confidential to the extent it is able under existing laws.

**11. Provide justification for any questions of a sensitive nature.**

There are no questions of a sensitive nature.

## 12. Provide an estimate in hours of the burden of the collection of information.

This submission (consistent with the previous submission approved as OMB # 0648-0450) estimates that approximately 934 applications will be received for the historical participation program. This estimate is based on permit (vessel)-specific lobster trap management area designation data extracted from the NOAA Fisheries permit database.

### Cover Letter

The time burden estimated for an applicant to prepare the **cover letter** is **15 minutes**. The total public time burden for preparation of a cover letter for all 934 expected applications is **14,010 min. (233.5 hours)**. See Table 1 under Item 13.

### Documentary Hardship Appeals

The estimated time burden on the public associated with the provision of affidavits and corroborating documents supporting a documentary hardship includes the aggregate time spent by both the permit holder (appellant) and the provider of the affidavit. The applicant must provide at least three, but no more than four, affidavits under this provision (see Item 2 for a detailed explanation).

NOAA Fisheries estimates that it would likely take the typical appellant approximately 30 minutes to identify and contact individuals qualified to provide an affidavit, including the time to subsequently collect the completed affidavit and submit it to NOAA Fisheries. An additional 30 minutes would typically be required by the individual preparing the affidavit to research any necessary records for pertinent information in support of the affidavit, and to complete and sign the document. This totals 60 minutes of public time burden associated with each affidavit. An additional 15 minutes is attributed to the individual consigned to provide the evidence that the appellant no longer has the eligibility documentation due to no fault of the appellant. Such corroborating documentation may be a report from a police or fire department or insurance agency, for example, if the loss of the eligibility documentation was due to flood or fire. Based on these estimates, the time burden if only three affidavits were needed is: 60 minutes per affidavit X 3 affidavits = 180 minutes, plus the additional 15 minutes to provide the corroborating documentation in support of the loss of the eligibility documentation = **195 minutes (3.25 hours)** of public burden for one documentary hardship appeal package **based on three affidavits**. See Table 2 under Item 13.

In circumstances when four affidavits are needed, the estimated time burden is: 60 minutes per affidavit X 4 affidavits = 240 minutes, plus 15 minutes to provide the corroborating documentation in support of the loss of the eligibility documentation = **255 minutes (4.25 hours)** of public burden for one documentary hardship appeal package **based on four affidavits**. See Table 2 under Item 13.

The total public time burden for preparing and submitting a documentary hardship appeal package is based on the assumption that 2%, or approximately 20, of the expected 934 applicants

will appropriately appeal under this provision. (It is anticipated that some applicants that are initially denied may attempt to appeal due to a documentary hardship, but will not be eligible to do so. Therefore, the burden associated with those appeals is covered under OMB# 0648-0450). NOAA Fisheries estimates that of those 20 that likely will appropriately appeal under a documentary hardship, ten (50%) are expected to be able to justify their eligibility with three affidavits, with the remaining ten appellants (50%) likely needing four affidavits. Therefore, the **total public time burden for all of the three-affidavit appeals** packages is 195 minutes (3.25 hours) X 10 packages = **1,950 minutes (32.50 hours)**. Correspondingly, the **total public time burden for all of the four-affidavit appeals** packages is 255 minutes (4.25 hours) X 10 packages = **2,550 minutes (42.50 hours)**. **The grand total for all ten application packages is, therefore, 4,500 minutes or 75.00 hours.** See Table 2 under Item 13.

#### Cover Letter and Documentary Hardship Appeals Package

The total time burden for each applicant who provides a cover letter with his or her application, is denied, and then subsequently submits an appeal under the documentary hardship provision is estimated to be the total time for preparing and submitting a cover letter (15 min.) plus the total time for preparing and submitting an appeal package based on three affidavits (195 min.) or four affidavits (255 min.). Therefore the **individual burden per application** is either **210 minutes or 270 minutes**. The **overall total time burden on the public** associated with this action is the total overall time burden for the ten expected packages based on three affidavits (1,950 minutes or 32.50 hours) plus the total overall burden for the ten expected packages based on four affidavits (2,550 minutes or 42.50 hours) plus the total time burden for the 934 cover letters (14,010 min. or 233.5 hours, see Table 1). That **grand total is 18,510 min. (308.5 hours)**. See Table 3 under Item 13.


### **13. Provide estimates of the total annualized cost burden to the respondents.**

A summary of the type of documentation required under this information collection and the associated public cost burden estimates of providing the documentation is provided below.

#### Cover Letter

NOAA Fisheries estimates that the **cover letter** will be not more than two sides of one letter-sized sheet of paper that will be submitted as part of the total application package. Therefore, no additional postal or material costs are expected in preparing and submitting the cover letter beyond those estimated and approved under OMB # 0648-0450 for preparing and submitting an initial application. Therefore, there are **no expected financial costs (\$0.00)** to applicants in association with preparing and submitting a cover letter with the application package. See Table 1.

Table 1. Estimated Public Burden (Time and Cost) to Include a Cover Letter with the Initial Application.

 Z	BURDEN PER APPLICATION		TOTAL BURDEN (934 Applications)	
	Time (min)	Cost (\$)	Time (min)	Cost (\$)
COVER LETTER	15 min.	0.00	<b>14,010 min. (233.5 hours)</b>	<b>0.00</b>

#### Documentary Hardship Appeals

The public financial burden estimated for appealing under a documentary hardship considers the cost of photocopies (at the discretion of the appellant) of the affidavits and corroborating documentation, and the cost of an envelope and postage.

Consistent with standard business practices, the appellant may decide to make a photocopy (copy) of each affidavit and each piece of corroborating documentation to substantiate the appellant's claim that he or she no longer possesses the supporting documentation for eligibility of historical participation in Areas 3, 4 and/or 5. The corroborating documentation is likely to be approximately five pages, depending on the type of documentation submitted. The appellant would also need to purchase a standard 8 ½" X 11" business envelope for use in submitting the appeal package, with an estimated cost of \$1.00. Postage fees for standard first class U.S. postage for submission of appeal documents is estimated to be approximately \$1.25 (postage based on weight of documents mailed and assumes 3 or 4 pages total for the affidavits, depending on the number of affidavits needed, and an average of five pages of corroborating documentation). There are no expected cost burdens on the individuals preparing the affidavits as it is assumed that the cost of any necessary materials would be reimbursed by the appellant.

The total estimated financial burden for preparing and submitting **one documentary hardship appeals package based on three affidavits** is the sum total of the following: one copy of each affidavit, and copies of corroborating documentation (three affidavits and five documents at \$0.10 per copy), \$0.80; envelope, \$1.00; and postage, \$1.25; totaling **\$3.05**. See Table 2.

The total estimated financial burden for preparing and submitting **one documentary hardship appeals package based on four affidavits** is \$3.05 (the calculated total for a three affidavit package as described above) plus the costs for one copy of the fourth affidavit, \$0.10; for a total of **\$3.15**. See Table 2.

NOAA Fisheries estimates that approximately 2% of the 934 applicants will appropriately appeal under the documentary hardship provision and, therefore, expects about 20 documentary hardship appeals packages. It is estimated that 50% of these appeals will need three affidavits and the other 50% will need four affidavits to demonstrate eligibility. **Ten appeals packages based on three affidavits** is estimated to be **\$30.50** (10 packages X \$3.05) and **ten packages based on four affidavits** is estimated to cost **\$31.50** (10 packages X \$3.15). Therefore, the **total**

**public cost burden for all twenty expected documentary hardship appeals submitted** is the sum of these two figures, that is, **\$62.00**.

Table 2. Estimated Public Burden (Time and Cost) for Documentary Hardship Appeals.

	INDIVIDUAL APPEAL PACKAGE BURDEN				TOTAL BURDEN (est. 10 appeals)					
	3 Affidavits (Min. Burden)		4 Affidavits (Max. Burden)		3 Affidavits (10 packages)		4 Affidavits (10 packages)		TOTAL (20 packages)	
	Time (min)	Cost (\$)	Time (min)	Cost (\$)	Time (min)	Cost (\$)	Time (min)	Cost (\$)	Time (min)	Cost (\$)
Affidavits	180	0.00	240	0.00	1,800	0.00	2,400	0.00	4,200	0.00
Corroborating Documents*	15	0.00	15	0.00	150	0.00	150	0.00	300	0.00
Incidental Expenses**	0.00	3.05	0.00	3.15	0.00	30.50	0.00	31.50	0.00	62.00
<b>TOTAL DOLLARS AND MINUTES</b>	<b>195</b>	<b>3.05</b>	<b>255</b>	<b>3.15</b>	<b>1,950</b>	<b>30.50</b>	<b>2,550</b>	<b>31.50</b>	<b>4,500</b>	<b>62.00</b>
<b>TOTAL DOLLARS AND HOURS</b>	<b>3.25 hrs.</b>	<b>\$3.05</b>	<b>4.25 hrs.</b>	<b>\$3.15</b>	<b>32.50 hrs.</b>	<b>\$30.50</b>	<b>42.50 hrs.</b>	<b>\$31.50</b>	<b>75.00 hrs.</b>	<b>\$62.00</b>

\*Needed only for one of the affidavits.

\*\* Includes copies of documents, purchase of mailing envelope, and postage. Time for conducting these tasks is factored into time burdens estimated for preparing the affidavits and compiling the corroborating documentation.

### Cover Letter and Documentary Hardship Appeals Package

The total financial burden for each applicant that provides a cover letter with his or her application, is denied, and then subsequently submits an appeal under the documentary hardship provision is estimated to be the total cost of preparing and submitting a cover letter (\$0.00) plus the total cost of preparing and submitting an appeal package based on three affidavits (\$3.05) or four affidavits (\$3.15). Therefore the **individual cost burden per application** is either **\$3.05 or \$3.15**. The overall total cost burden on the public associated with this action is the total overall cost burden for the ten expected packages based on three affidavits (\$30.50) plus the total overall burden for the ten expected packages based on four affidavits (\$31.50) plus the total burden for the 934 cover letters (\$0.00). That **grand total** is **\$62.00**. See Table 3.

Table 3. Total Estimated Public Burden (Time and Cost) of Submitting a Cover Letter with the Initial Application Package and Appealing Under a Documentary Hardship.

	BURDEN PER APPLICATION				TOTAL PUBLIC BURDEN	
	Cover Letter and 3 Affidavits		Cover Letter and 4 Affidavits		Total (20 appeals packages and 934 cover letters)	
	Time (min)	Cost (\$)	Time (min)	Cost (\$)	Time (min)	Cost (\$)
Pubic Burden	210	3.05	270	3.15	<b>18,510 min. (308.5 hours)</b>	<b>\$ 62.00</b>

#### 14. Provide estimates of annualized costs to the government.

NOAA Fisheries estimates that one-time cost and time burdens will be realized by the Federal government for labor to review and process the cover letters and documentary hardship appeals as specified in this submission. There are no material costs expected (i.e., equipment, office supplies, etc.).

##### Cover Letter

Costs to the Federal government would result from the labor associated with the time needed to review the 934 expected cover letters and twenty documentary hardship appeal packages, as well as the follow up and processing of the hardship appeals. One GS-10, or equivalent, employee with an average annual salary of approximately \$48,000 would be assigned to receive, and conduct an initial review of, the documents submitted, and potentially contact any applicants or appellants concerning incomplete submissions. **The time estimated for these duties is approximately 5 minutes to review each cover letter, or 4,670 minutes (77.8 hours) for all 934 expected applications.** Subsequent review of the cover letter and any time burden associated with its processing and analysis is covered under the Federal government burden estimates approved for the entire historical participation qualification process in OMB # 0648-0450. Therefore, the **total Federal government burden associated with the cover letter**, within the scope of this supporting statement, is limited to the initial review as described above, or **77.8 hours**. The labor costs associated with the review of the cover letters, with respect to the reviewer's estimated \$48,000 annual salary is broken down as follows: \$48,000 per year = \$923.08 per week = \$23.08 per week (based on a 40 hour work week). **77.8 hours of review time X \$23.08 per hour = \$1,795.62.** See Table 4.

##### Documentary Hardship Appeals

The handling of the documentary hardship appeals packages will likely be done on two levels - an initial review and log-in followed by a secondary analysis and decision process, including any

adjustments to the appellant's permits. The **initial review** of each documentary hardship appeal package, including log-in time, contact with the appellant with questions, or time associated with returning incomplete applications, may be done by a GS-10 level employee, or equivalent. This initial review is estimated at **60 minutes per appeal package, or 1,200 minutes (20 hours) for all twenty expected appeals**. The **costs** associated with this would be 1 hour X \$23.08 per hour = **\$23.08 for each appeals package**, or 20 hours X \$23.08 = **\$461.60 for the initial review of all twenty documentary hardship appeals packages**.

The secondary review and analysis of the documentary hardship appeals packages would be conducted by the designated appeals officer who is likely to be a GS-13 employee, or equivalent, with an average annual salary of approximately \$85,000. This responsibility would include analysis of the affidavits and corroborating documentation received, telephone calls and written correspondence to the appellant or those individuals who have provided affidavits on behalf of the appellant for questions or clarifications, a potential appeal hearing with the appellant, and a final recommendation to the Regional Administrator to either approve or deny the appeal. The Federal burden would also include the appeal officer's labor costs from consultations with staff in other NOAA Fisheries divisions concerning the issuance of any provisional permit/Letters of Authorization while the appeal is pending, the issuance of permits based on the final agency determination to grant the appeal, and correspondence associated with the final agency determination for denial.

The Federal burden associated with **each appeals package for the secondary review** is estimated at approximately **5 hours**. The total **time for all twenty expected appeals** packages at this level is **100 hours**. The **labor costs** at the GS-13 level are broken down as follows: \$85,000 per year = \$1,634.61 per week = \$40.87 per hour X 5 hours = **\$204.35 for one appeals package, or \$4,087.00 (\$204.35 X 20) for all twenty expected appeals packages**.

The grand total of the Federal government time burden for the entire review and processing of all the documentary hardship appeals packages is the total time of the initial review by the GS-10 level employee, that is 1 hour per package, plus the total time of the secondary review by the GS-13 level employee, that is 5 hours per package, totaling **6 hours of total review time per documentary hardship appeal package**. The **total time burden for all twenty appeals** would be 6 hours total time per appeals package X 20 appeals packages totaling **120 hours**.

To determine the **Federal cost burden for one appeal package**, the same logic would be employed. The initial review cost of \$23.08 per package plus \$204.35 for the secondary review, totaling **\$227.43**. The total cost burden for all twenty appeals packages would, therefore, be \$461.60 (GS-10 level initial review total) plus \$4,087.00 (GS-13 level secondary review total) for a **grand total burden for the handling of all twenty appeals of \$4,548.60**. See Table 4.

#### Cover Letter and Documentary Hardship Appeals Package

The total Federal time burden associated with this submission is the total time for the handling of all 934 cover letters expected (77.8 hours), plus the total time needed for the review and processing of all twenty expected documentary hardship appeal packages (120 hours), totaling



**197.8 hours of total time burden on the Federal government.** The **total Federal cost burden** is the total financial cost for the review of all 934 cover letters (\$1,795.62), plus the total cost to review and process all twenty expected documentary hardship appeals packages (\$4,548.60), totaling **\$6,344.22**. See Table 4.

Table 4. Estimated Costs to the Federal Government

Cover Letter Review				Review and Process Documentary Hardship Appeals				TOTAL FEDERAL BURDEN*	
Burden per Cover Letter		Total for 934 Cover Letters		Burden per Appeal Package*		Total Burden (20 Packages)			
Time (min)	Cost (\$)	Time (hrs)	Cost (\$)	Time (hours)	Cost (\$)	Time (min)	Cost (\$)	Time (hours)	Cost (\$)
5	1.92	77.8	1,795.62	6	227.43	120	4,548.60	197.8	6,344.22

\*Includes initial review and total processing time by employees at the GS-10 and GS-13 level, or equivalent.

\*\*Assumes total overall federal government time and economic burdens associated with the labor to review and process all cover letters and documentary hardship appeals packages received.

#### **15. Explain potential changes in burden.**

The change in burden represents a programmatic change resulting from new requirements.

#### **16. Describe any plans for any statistical use of this information.**

Results from this collection may be used in scientific, management, technical or general publications such as Fisheries of the United States which follows prescribed statistical tabulations and summary table formats. Data are available to the general public upon request in summary form only; data are available to NOAA Fisheries employees in detailed format on a need-to-know basis.

#### **17. Explain the reasons why display would be inappropriate.**

All forms will display the OMB control number and expiration date along with information relevant to the Paperwork Reduction Act of 1995.

#### **18. Explain each exception to the certification statement.**

All instances of this submission comply with 5 CFR 1320.9.

### **B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

No statistical methods will be employed for the purposes of this information collection requirement.



-CITE-

16 USC Sec. 5103

01/02/01

-EXPCITE-

TITLE 16 - CONSERVATION

CHAPTER 71 - ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

-HEAD-

Sec. 5103. State-Federal cooperation in Atlantic coastal fishery  
management

-STATUTE-

(a) Federal support for State coastal fisheries programs

The Secretary in cooperation with the Secretary of the Interior shall develop and implement a program to support the interstate fishery management efforts of the Commission. The program shall include activities to support and enhance State cooperation in collection, management, and analysis of fishery data; law enforcement; habitat conservation; fishery research, including biological and socioeconomic research; and fishery management planning.

(b) Federal regulation in exclusive economic zone

(1) In the absence of an approved and implemented fishery

management plan under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), and after consultation with the appropriate Councils, the Secretary may implement regulations to govern fishing in the exclusive economic zone that are -

(A) compatible with the effective implementation of a coastal fishery management plan; and

(B) consistent with the national standards set forth in section 301 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1851).

The regulations may include measures recommended by the Commission to the Secretary that are necessary to support the provisions of the coastal fishery management plan. Regulations issued by the Secretary to implement an approved fishery management plan prepared by the appropriate Councils or the Secretary under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) shall supersede any conflicting regulations issued by the Secretary under this subsection.

(2) The provisions of sections 307, 308, 309, 310, and 311 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1857, 1858, 1859, 1860, and 1861) regarding prohibited acts, civil penalties, criminal offenses, civil forfeitures, and enforcement shall apply with respect to regulations issued under this subsection as if such regulations were issued under the

Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

-SOURCE-

(Pub. L. 103-206, title VIII, Sec. 804, Dec. 20, 1993, 107 Stat. 2449; Pub. L. 104-297, title IV, Sec. 404(b), Oct. 11, 1996, 110 Stat. 3619; Pub. L. 106-555, title I, Sec. 122(b)(3), Dec. 21, 2000, 114 Stat. 2766.)

-REFTEXT-

REFERENCES IN TEXT

The Magnuson-Stevens Fishery Conservation and Management Act, referred to in subsec. (b), is Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331, as amended, which is classified principally to chapter 38 (Sec. 1801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

-MISC2-

AMENDMENTS

2000 - Subsec. (b). Pub. L. 106-555 substituted  
' 'Magnuson-Stevens Fishery' ' for ' 'Magnuson Fishery' ' wherever  
appearing.

1996 - Subsec. (b)(1)(A). Pub. L. 104-297 substituted  
' 'compatible with' ' for ' 'necessary to support' '.